

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

FEB 10 2005 P D: 22
CIVIL ACTION NO.

DAVID BREMNER, Individually and as Father and Next Friend of MOLLY BREMNER, and VICKI BAKER)	
Plaintiffs)
v.)
A.B. CHANCE COMPANY and HUBBELL INCORPORATED)
Defendants.)
COMPLAINT		
Plaintiffs Claim Trial by Jury		
04 - 40253 FDS		

Plaintiffs David Bremner, individually and as father and next friend of Molly Bremner, and Vicki Baker, complaining of the defendants, allege as follows:

1. Plaintiffs David Bremner and Vicki Baker, husband and wife, and their minor daughter, Molly Bremner, are citizens of the Commonwealth of Massachusetts.
2. Defendant A.B. Chance Company, (hereafter "Chance"), is a Delaware corporation with its principal place of business in Missouri.
3. Defendant Hubbell Incorporated (hereafter "Hubbell"), is a Delaware corporation with its principal place of business in Connecticut.
4. Chance is a wholly owned subsidiary of Hubbell.
5. At all times relevant hereto, Chance and Hubbell were registered to do business and regularly did business in the Commonwealth of Massachusetts, including Suffolk County, and derived substantial revenue therefrom.

RECEIPT # 404469
 AMOUNT \$ 150.00
 SUMMONS ISSUED ✓
 LOCAL RULE 4.1 ✓
 WAIVER FORM ✓
 MCF ISSUED ✓
 BY DPTY. CLK. S. Jones
 DATE 12/10/04

6. Jurisdiction is based upon 28 U.S.C. § 1332 in that there is diversity of citizenship and the amount in controversy exceeds \$75,000.

7. Chance and Hubbell are engaged in the development, design, assembly, testing, inspection, manufacture, distribution and sale of electric utility products, including cutouts intended to protect against faults and over-current conditions on electrical utility power distribution systems.

8. At all times relevant hereto, Chance and Hubbell were engaged in the solicitation and transaction of business within Massachusetts with respect to the sale and use of their products, including cutouts, in the ordinary course of commerce and trade, and the use thereof resulted in physical injury to the plaintiff David Bremner.

9. On June 22, 2002, David Bremner, in the course of his employment as a line department crew leader with Massachusetts Electric, was installing grounds for the purpose of replacing a padmounted transformer at a utility pole on Fredette Street in Gardner, Massachusetts.

10. Mr. Bremner was in the process of grounding at the low side (or load side) of an open fuse cutout when a flash occurred.

11. The cutout was manufactured and sold by Chance.

12. The flash occurred due to a crack in the porcelain body of the cutout.

13. Mr. Bremner was severely burned.

COUNT I
NEGLIGENCE – ALL DEFENDANTS

14. Plaintiff David Bremner incorporates and repeats the allegations set forth in the prior paragraphs as though fully set forth herein.

15. At all times relevant hereto, David Bremner was employed as a line department crew leader at Massachusetts Electric.

16. At all times relevant hereto, defendants acted through their respective officers, employees and agents, who in turn were acting within the scope of their authority and employment in furtherance of the business of the defendants.

17. At all times relevant hereto, defendants were engaged directly or indirectly in the development, assembly, testing, inspection, design, manufacture, production, sale and marketing of fuse cutouts which they knew, or in the exercise of due care should have known, would be used in the manner in which the failed cutout actually was used by David Bremner.

18. At all times relevant hereto, Massachusetts Electric utilized fuse cutouts designed, manufactured, provided, sold, distributed, marketed and promoted by the defendants in a manner that was consistent with their intended use.

19. Defendants' fuse cutouts, including the cutout involved in this incident, reached David Bremner's place of employment and were installed by Massachusetts Electric without significant alteration or modification from the condition in which they were sold by Chance.

20. Defendants knew or should have known that David Bremner's use of and/or exposure to its fuse cutouts would expose him to a risk of electrocution, burns, serious injury or death and, in view of such knowledge, defendants were under a duty to properly and adequately design, manufacture, assemble, test, inspect, label and package, distribute and sell, and to place in the channels of commerce and trade the porcelain fuse cutout in a reasonably safe condition so as not to present a danger to those members of

the general public who reasonably and expectedly, under ordinary circumstances, would come in contact with it, and to properly and adequately warn foreseeable users of all the risks and dangers inherent in its use and misuse, and to provide adequate and proper instructions for the safe use thereof.

21. While performing his employment duties and responsibilities, David Bremner used and was exposed to the defendants' fuse cutouts as a normal and customary part of his employment.

22. David Bremner was a person who would reasonably have been expected to use, contact, be exposed to and be affected by the defendants' fuse cutouts.

23. As a direct and proximate result of David Bremner's contact with one of the defendants' fuse cutouts, he suffered burns, disabling physical injuries and psychological injuries.

24. Defendants knew, or in the exercise of reasonable care should have known, that contact with its fuse cutouts would create a dangerous and unreasonable risk of electrocution, burns, serious injury or death.

25. Despite the facts set forth above, the defendants negligently, recklessly and intentionally:

- a) designed, manufactured, produced, sold, marketed, tested and/or otherwise placed in the stream of commerce, fuse cutouts which defendants knew, or in the exercise of reasonable care should have known, were defective, dangerous, ultra hazardous and otherwise unreasonably harmful to the plaintiff and others similarly situated;

- b) failed to take reasonable precautions or otherwise warn plaintiff adequately of the risks, dangers and harm to which plaintiff would be exposed from contact with the defendants' fuse cutouts;
- c) failed to provide information or safe and sufficient safeguards, instruction, equipment, attachments, furnishings and/or appliances to protect plaintiff from being injured by defendants' fuse cutouts;
- d) ignored and/or suppressed complaints, reports, information, studies, tests, data and literature concerning the dangers of their fuse cutouts;
- e) continued to subject David Bremner and other persons similarly situated to the risk of grievous injuries which risk defendants knew, or in the exercise of reasonable care should have known, was a consequence of exposure to their fuse cutouts;
- f) failed to develop and market substitute fuse cutouts;
- g) failed to recall their fuse cutouts;
- h) failed to advise David Bremner, his employer, and other persons and entities similarly situated to cease further use of their fuse cutouts;
- i) failed to test for and discover the hazards posed by use and/or contact with defendants' fuse cutouts; and
- j) defendants otherwise acted negligently, recklessly and with intentional disregard for the welfare of David Bremner and other persons similarly situated in designing, producing, selling, marketing, testing and or otherwise placing in the stream of commerce their fuse cutouts.

26. As a direct and proximate result of the negligent acts and omissions of the defendants, David Bremner suffered severe burns, disabling physical injuries, as well as psychological injuries; has spent sums of money for medical care related thereto; has incurred economic loss; has been prevented and will be prevented from pursuing his normal activities and employment; has experienced severe pain and suffering, emotional distress and mental anguish related to the injuries; and has been deprived of his ordinary pursuits and enjoyment of life.

COUNT II
BREACH OF WARRANTY – ALL DEFENDANTS

27. Plaintiff David Bremner incorporates and repeats the allegations set forth in the prior paragraphs as though fully set forth herein.

28. Defendants expressly or impliedly warranted to the general public and to the plaintiff David Bremner, as a foreseeable user, that their fuse cutouts were merchantable, reasonably fit for use, and safe for their intended purpose.

29. Defendants breached said warranties in that their fuse cutouts were not merchantable, not reasonably fit for use and not safe for their intended purposes.

30. David Bremner relied upon the defendants' express and implied warranties.

31. As a direct and proximate result of defendants' breach of express and/or implied warranties, David Bremner suffered severe burns, disabling physical injuries, as well as psychological injuries; has spent sums of money for medical care related thereto; has incurred economic loss; has been prevented and will be prevented from pursuing his normal activities and employment; has experienced severe pain and suffering, emotional

distress and mental anguish related to his injuries; and has been deprived of his ordinary pursuits and enjoyments of life.

COUNT III
MISREPRESENTATION – ALL DEFENDANTS

32. Plaintiff David Bremner incorporates and repeats the allegations set forth in the prior paragraphs as though fully set forth herein.

33. Defendants negligently and intentionally misrepresented to David Bremner, and other persons similarly situated, and otherwise failed to disclose, the catastrophic risks created by the ordinary and intended use of and contact with their fuse cutouts.

34. David Bremner reasonably and foreseeably relied upon said representations.

35. As a direct and proximate result of the defendants' negligent and/or intentional misrepresentations, the plaintiff David Bremner suffered severe burns, disabling physical injuries, as well as psychological injuries; sums of money for medical care related thereto; has incurred economic loss; has been prevented and will be prevented from pursuing his normal activities and employment; has experienced severe pain and suffering, emotional distress and mental anguish related to the injuries; and has been deprived of his ordinary pursuits and enjoyments of life.

COUNT IV
BREACH OF CONTRACT – ALL DEFENDANTS

36. Plaintiff David Bremner incorporates and repeats the allegations set forth in the prior paragraphs as though fully set forth herein.

37. At all times relevant hereto, Chance and Hubbell held themselves out to Massachusetts Electric as selling, producing, manufacturing, assembling and delivering fuse cutouts and, in consideration of monies paid by Massachusetts Electric, sold and provided Massachusetts Electric with fuse cutouts, including the cutout that caused injury to David Bremner.

38. David Bremner, as an employee of Massachusetts Electric, was a reasonably foreseeable and direct beneficiary of the contract between Massachusetts Electric and Chance and Hubbell.

39. Chance and Hubbell breached their agreement with Massachusetts Electric by reason of the following acts and omissions:

- a) sold to Massachusetts Electric fuse cutouts which defendants knew, or in the exercise of reasonable care should have known, were defective, dangerous, ultra hazardous and otherwise unreasonably harmful to foreseeable users;
- b) failed to take reasonable precautions or otherwise warn Massachusetts Electric adequately of the risks, dangers and harms to which foreseeable users would be exposed from contact with the defendants' fuse cutouts;
- c) failed to provide information or safe and sufficient safeguards, instruction, equipment, attachments, furnishings and/or appliances to Massachusetts Electric to protect foreseeable users from being injured by defendants' fuse cutouts;

- d) ignored and/or suppressed complaints, reports, information, studies, tests, data and literature concerning the dangers of their fuse cutouts;
- e) continued to subject employees of Massachusetts Electric to the risk of grievous injuries which risk defendants knew, or in the exercise of reasonable care should have known, was a consequence of exposure to their fuse cutouts;
- f) failed to develop and market substitute fuse cutouts;
- g) failed to recall their fuse cutouts;
- h) failed to advise Massachusetts Electric to cease further use of their fuse cutouts;
- i) failed to test for and discover the hazards posed by use and/or contact with defendants' fuse cutouts; and
- j) defendants otherwise acted recklessly and with intentional disregard for the welfare of Massachusetts Electric employees in designing, producing, selling, marketing, testing and or otherwise placing in the stream of commerce their fuse cutouts.

40. As a result of the defendants' breach of contract, David Bremner was directly and proximately caused to sustain severe burns, disabling physical injuries, as well as psychological injuries; has spent sums of money for medical care related thereto; has incurred economic loss; has been prevented and will be prevented from pursuing his normal activities and employment; ; has experienced severe pain and suffering, emotional distress and mental anguish related to his injuries; and has been deprived of his ordinary pursuits and enjoyments of life.

COUNT V
STRICT LIABILITY – ALL DEFENDANTS

41. Plaintiff David Bremner incorporates and repeats the allegations set forth in the prior paragraphs as though fully set forth herein.

42. Defendants are strictly liable to the plaintiff David Bremner by reason of the following:

- a) defendants were engaged in the business of manufacturing, designing, producing, marketing, merchandising, selling, supplying and distributing fuse cutouts;
- b) defendants sold or otherwise placed their fuse cutouts into the stream of commerce in a defective condition, unreasonably dangerous to the plaintiff David Bremner and other persons similarly situated;
- c) defendants' fuse cutouts reached the plaintiff David Bremner and other users and consumers without substantial alteration or modification in the condition in which they were sold;
- d) the fuse cutouts were defectively designed; they were marketed with manufacturing defects; they contained inadequate warnings and the risk relating thereto outweighed their utility as marketed; and
- e) the ordinary and foreseeable use of the defendants' fuse cutouts created an unreasonable risk of injury to the users.

43. As a direct and proximate result of David Bremner's use of said defective products, he was caused to suffer severe burns, disabling physical injuries, as well as psychological injuries; has spent sums of money for medical care, treatment and monitoring related thereto; has incurred economic loss; has been prevented and will be

prevented from pursuing his normal activities and employment; has experienced severe pain and suffering, emotional distress and mental anguish related to the injuries; and has been deprived of his ordinary pursuits and enjoyments of life.

COUNT VI
VIOLATION OF G.L. c. 93A – ALL DEFENDANTS

44. Plaintiff David Bremner incorporates and repeats the allegations set forth in the prior paragraphs as though fully set forth herein.

45. The acts, omissions and breaches of warranty by Chance and Hubbell as alleged above constitute deceptive acts or practices within the meaning of G.L. c. 93A §§ 2 and 9, 940 C.M.R. 3.05(1) and 940 C.M.R. 3.16(3). The acts, omissions and breaches of warranty alleged above were willingly and knowingly made.

46. The acts, omissions and breaches of warranty alleged above substantially took place in Massachusetts.

47. As a direct and proximate result of Chance's and Hubbell's violations of G.L. c. 93A, 940 C.M.R. 3.05(1) and 940 C.M.R. 3.16(3), David Bremner was caused to suffer severe burns, disabling physical injuries, as well as psychological injuries; has spent sums of money for medical care, treatment and monitoring related thereto; has incurred economic loss; has been prevented and will be prevented from pursuing his normal activities and employment; has experienced severe pain and suffering, emotional distress and mental anguish related to the injuries; and has been deprived of his ordinary pursuits and enjoyments of life.

COUNT VII
LOSS OF SPOUSAL SOCIETY AND CONSORTIUM

48. Plaintiff Vicki Baker incorporates and repeats the allegations set forth in the prior paragraphs as though fully set forth herein.

49. At all times relevant hereto, plaintiff Vicki Baker was, and still is, the lawful wife of plaintiff David Bremner.

50. By reason of the aforesaid, and as a direct and proximate result of the defendants' negligence, breach of warranty, misrepresentation, violation of G.L. c. 93A, and of her husband's use of the defendants' defective product, Vicki Baker has been, and will continue to be, deprived of the support, society, care, consortium, companionship and services of her husband.

51. Vicki Baker has been required, is required, and will continue to be required, to perform many tasks and functions formerly performed by and/or shared with her spouse, and she has been otherwise damaged.

COUNT VII
LOSS OF PARENTAL SOCIETY

52. Plaintiff David Bremner, as father and next friend of Molly Bremner, repeats the allegations set forth in the prior paragraphs as though fully set forth herein.

53. Molly Bremner is the minor daughter of the plaintiff David Bremner.

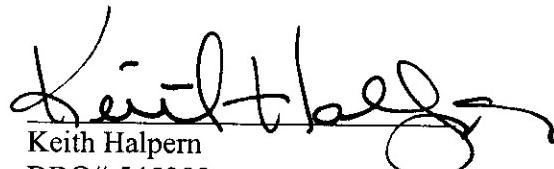
54. By reason of the aforesaid, and as a direct and proximate result of the defendants' negligence, breach of warranty, misrepresentations, violation of G.L. c. 93A, and of her father's use of the defendants' defective product, Molly Bremner has been, and will continue to be, deprived of the support, society, care, consortium and services of her father.

DEMAND FOR RELIEF

WHEREFORE, plaintiffs David Bremner, individually and as father and next friend of Molly Bremner, and Vicki Bremner request that this Court award them compensatory damages against defendants A.B. Chance Company and Hubbell Incorporated, plus interest, costs and attorney fees. The plaintiffs also demand attorney's fees and multiple damages as provided by G.L. c. 93A, and such other and further relief and the Court may deem appropriate.

Jury Claim

Plaintiffs hereby claim a trial by jury.



Keith Halpern
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Boston, MA 02114
(617) 722-9952

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

04-40253

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BREMNER, DAVID
BAKER, VICKI

(b) County of Residence of First Listed Plaintiff WORCESTER
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

A. B. CHANCE COMPANY
HUBERLIC INCORPORATED

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

KEITH HALPERN
4 Longfellow Place, Suite 3703 Boston MA 02114
(617) 722-9952

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | |
|---|----------------------------|-----|--|----------------------------|
| Citizen of This State | X 1 | DEF | <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | DEF |
| Citizen of Another State | <input type="checkbox"/> 2 | DEF | <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | X 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | DEF | <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 154 Medicare Act <input type="checkbox"/> 152 Recovery of Defrauded Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input checked="" type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
REAL PROPERTY	CIVIL RIGHTS <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	PRISONER PETITIONS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
			LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW W (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAXSUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- | | | | | | | |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C. § 1332 - Diversity - Severe burns caused by defective electrical product

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) (See instructions):

IF ANY

JUDGE
E

DOCKET NUMBER

DATE 12/3/04 SIGNATURE OF ATTORNEY OF RECORD Keith Halpern

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFFP JUDGE MAG. JUDGE

04-40253

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) David Brewner v. A.B. Chance Company

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO 7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES NO A. If yes, in which division do all of the non-governmental parties reside?Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Keith HalpernADDRESS 4 Longfellow Place, Suite 3703 Boston MA 02114TELEPHONE NO. (617) 722-9952